IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2006

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Writ Petitions Nos.10331 and 18805 of 2000

A.Mohammed Hussain Haleel — Petitioner in both the writ petitions

v.

1. The Secretary,
The Ministry of Petroleum and Natural Gas,
Shastri Bhavan, New Delhi 110 001.

2. The Joint Secretary (Marketing),
The Ministry of Petroleum and Natural Gas,
Shastri Bhavan, New Delhi 110 001. Respondents 1 and 2 in both the writ petitions

3. Indian Oil Coporation Limited,
represented by its Chairman,
Scope Complex Core 2,
7 Institutional Area,
Lodhi Road, New Delhi 3.

4. The Director (Marketing),
Indian Oil Bhavan,
G-9, Ali Yavar Jung Marg,
Bandra (East), Bombay 400 051. — Respondents 3 & 4 in W.P.No.10331 of 2000

5. The Chief Retail Marketing Manager,
Bharat Petroleum Oil Corporation Limited,
No. 1 Ranganathan Garden Street
Anna Nagar, Chennai 40

Respondent 3 in W.P. No.18805 of 2000

6. The Deputy General Manager 9 1/c (TN &P)
Indian Oil Corporation, Indian Oil Bhavan,
139, Nungambakkam High Road, Chennai.

7. K.Ramakrishnan
Senior Divisional Manager,
Indian Oil Corporation Limited,
Madurai Division Office,

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No.2, Race Course Road,
Chokkikulam, Madurai 625 002.

8. R.Meenakshi Sundaram,
Assistant Manager (Sales),
Indian Oil Corporation,
Thatchanallur, Tirunelveli.

9. Krishna Moorthy,
Installation Manager,
Indian Oil Corporation,
Thatchanallur, Tirunelveli.

10.P.M.Nazimudeen,
Divisional Manager,
Indian Oil Corporation Limited,
No.2, Race Course Road,
Chokkikulam, Madurai 625 002. Respondents 6 to 10 in
W.P. No.10331 of 2000

Writ Petition No.10331 of 2000 is filed under Article 226 of the Constitution of India for the issue of writ of certiorari to call for the records relating to the termination order passed by the sixth respondent against the petitioner in TNLA/Termination dated 07.12.1999 and to quash the same.

Writ Petition No.18805 of 2000 is for the issue of writ of mandamus against the first respondent to recall the order of sanction issued in favour of the third respondent to start a new petroleum retail outlet in survey No.214/2 of Puthur village, Shencottah Taluk, Tirunelveli District.

For Petitioner : Mr.R.Karuppan
For Respondents : Mr.T.R.Rajagopalan, Senior Counsel, for M/s. Meera Gupta

ORDER

These two writ petitions are filed by the petitioner Mohammed Hussain Haleel - the former writ petition seeking for the issue of writ of certiorari to call for the records relating to the order of termination passed by the sixth respondent, the Deputy General Manager, Marketing Division, Indian Oil Corporation, Chennai, terminating the petrol/HSD pump dealership agreement dated 22.06.1985 executed by the petitioner with the respondents-Corporation and quash the same and the latter writ petition seeking for the relief of issue of writ of mandamus against the first respondent, the Secretary of the Ministry of Petroleum and Natural Gas, Shastri Bhavan, New Delhi, to recall the order of sanction issued in favour of the third respondent, the Chief Retail Marketing Manager, Bharath Petroleum Corporation, Chennai to start a new petrol retail outlet in survey No.214/2 of

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Puthur village, Shencottah Taluk, Tirunelveli District.

2. The common case of the petitioner in these two writ petitions is as follows:

The petitioner was appointed as a retail outlet dealer at Puliyarai village at Shencottah Taluk by the sixth respondent by his proceedings dated 17.06.1985 and pursuant to the same an agreement was entered into between the parties for the said dealership on 22.06.1985 containing various terms and conditions. On 03.06.1994 the petitioner entered into a short term financial agreement with one Syed Ibrahim on the basis of two formal agreements - one is partnership agreement and the other is in respect of immovable property where the retail outlet was located. The petitioner also sent a letter during his weak moment seeking permission from the respondent-Corporation to induct the said Syed Ibrahim as a partner. In the affidavit filed in support of the former writ petition, the petitioner has narrated so many civil and criminal disputes between the petitioner and Syed Ibrahim, which are not germane to the issue involved in these writ petitions.

3. In paragraph 27 of the affidavit, the petitioner has further stated his case to the effect that the petitioner received a show cause notice dated 11.11.1999, superscribed as though sent by registered post with acknowledgment due, but actually sent by ordinary post during the first week of November, 1999. After that, he received the same show cause notice sent through the seventh respondent by registered post with acknowledgment due on 04.12.1999. On 10.12.1999 the petitioner sent an interim reply requesting him to extend the time limit for sending a detailed reply. In the meanwhile, without waiting for and affording a reasonable opportunity, the sixth respondent passed the order of termination vide order dated 07.12.1999. The petitioner received the same on 27.12.1999.

4. The petitioner assails the correctness of the order of termination dated 07.12.1999 on the ground that though the show cause notice dated 11.11.1999, received on 04.12.1999 gave ten days' time from the date of receipt of the notice to submit his explanation, the impugned order of termination came to be passed on 07.12.1999 even prior to the expiry of the time granted, i.e., 14.12.1999. Besides that, the impugned order being non speaking, cryptic and contrary to facts, arbitrary and mala fide. The respondent Corporation, while exercising the power under the agreement dated 22.06.1985 has not followed the procedural safeguards available to the petitioner and deprived the petitioner of the basic right to be heard on the principle of audi alteram partem. The show cause notice of the sixth respondent was issued in total violation of Clause 3 of the agreement dated 22.06.1985. Clause 69(a) of the agreement provides for

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referring the disputes between the parties to arbitration. But the impugned order was passed in total violation of the said express binding covenant of the agreement and thus deprives the livelihood of the petitioner.

5. The sixth respondent has filed a counter, wherein all the allegations contained in the affidavit are either met on facts or denied specifically. The crux of the counter proceeds that the petitioner had surreptitiously entered into the partnership agreement on 03.06.1994 with Syed Ibrahim for the operation of the retail outlet and the same had been registered on 06.06.1994 at Tenkasi Registrar's office and thus the petitioner operated the retail outlet in the name of benami. The contention of the petitioner that the partnership entered into with the said Syed Ibrahim was only for promoting financial transaction between them and had nothing to do with the running of retail outlet, is nothing but a plea taken to suit his convenience. The fact and the act of unapproved operation of the retail outlet by benami is violative of the terms of contract. The Divisional Office of the respondent Corporation issued several letters to the petitioner inviting him to discuss the matter and take remedial steps to stop such illegal activities, in futility. As the petitioner was not responding, inspite of the best efforts made by the respondent Corporation, the Manager (Sales) Mr.Gunasekaran visited the dealer's place, but was told that the petitioner was out of station. Even thereafter, the petitioner never cared to rectify the mistake committed by him, which was repeatedly pointed out by the respondents-Corporation. Having no other alternative, but following the principle of natural justice, an opportunity was afforded to the petitioner to explain the cause of his mis deeds, by issuing a show cause notice dated 07.07.1999 by the Divisional Office, Madurai through registered post. The said notice was received on 19.07.1999, but there was no reply. However, in the counter there is no reference about the subsequent show cause notice dated 11.11.1999, which formed the basis for passing of the impugned order dated 07.12.1999.

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6. Heard the learned counsel on either side and perused the materials available on record.

7. As per Clause 35 of the agreement dated 22.06.1985 the dealer should not sell, assign, sub-let, mortgage, charge or part with or otherwise transfer the premises or any part thereof, his interest in the dealership or any right or interest or benefit conferred by the agreement or grant any licence in connection with the said premises and/or outfit or any part thereof to any person, firm or company and not allow any other person, firm or company to use the premises or the outfit or any part thereof, except to the extent necessary under the terms of

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the agreement and specifically permitted in writing by the Corporation. Clause 46 of that agreement provides that it shall be the paramount condition of the agreement that the dealer himself (if he is an individual) or both partners of the dealer firm (if the dealer is a partnership firm consisting of two partners only) or the majority of the partners of the dealer firm (if the dealer is a firm consisting of more than two partners) or the majority of the members of the dealer Co-operative society (if the dealer is a co-operative society) as the case may be, shall take active part in the management and running of the retail outlet and shall personally supervise the same and shall not under any circumstances do so through any other person or body. Clause 47 of the agreement provides that except with the previous written consent of the Corporation, the dealer shall not enter into any arrangement, contract, understanding, whereby the operations of the dealer hereunder are/or may be controlled carried out and/or financed by any other person, firm or company whether directly or indirectly and whether in whole or in part; and that the dealer himself (if he is an individual) or the partners/members or any of them of the dealer (if the dealer is a firm/co-operative society) shall not take up any other employment or engage in any other business apart from the running of the retail outlet which is the subject matter of the agreement; and that the dealer (if it be a firm or a co-operative society) shall not effect any change in its constitution whether in the identity of its partners/members or in the share shareholding of any of them or in the terms of deed of partnership or of the bye-laws as the case may be.

8. Clause 58 of the agreement read thus :

> "Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty to terminate this agreement forthwith upon or at any time after the happening of any of the following events, namely :
>
> (a) If the dealer shall commit a breach of any of the covenants and stipulations contained in the agreement, and fail to remedy such breach within four days from the receipt of a written notice from the Corporation in that regard.
>
> (b) .....
>
> The Corporation's right to terminate this agreement under the terms of this clause shall be without prejudice to any of its other rights and remedies against the dealer. In the event of the Corporation terminating this agreement under the provisions of this clause,it shall not be liable to

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pay for any of loss or compensation in respect of such termination. PROVIDED THAT the supply of any petroleum products by the Corporation to the Dealer, the dealer entitling the Corporation to terminate this Agreement shall have become known to the Corporation, shall not in any way prejudice or affect the right of the Corporation to revoke and or enforce the termination of this agreement and the licence granted hereunder.

9. The consequence of breach or contravention of any one of the conditions or covenants agreed upon by the parties is the termination of the agreement as provided in clause 58. Under the said clause, the Corporation reserved its right to terminate the agreement forthwith upon or at any time if the dealer commits a breach of the covenants or stipulations contained in the agreement and fail to remedy such breach within four days of the receipt of a written notice in that regard. The said termination is without prejudice to any of its other rights and remedies against the dealer and that the Corporation is not liable to pay any loss or compensation.

10. On facts, it could be seen from the show cause notice dated 07.07.1999 the petitioner has committed a breach of the covenant of the agreement, in the sense, that he had entered into a partnership deed with one Syed Ibrahim for operating the said dealership vide the partnership deed registered with the Registrar of Firms, Tenkasi on 06.06.1994 without prior written approval of the respondents Corporation, as required under Clause 35 and 47 (i) of the dealership agreement. It is also evident that as an annexure to the show cause notice dated 07.07.1999, a copy of the registration certificate of the Registrar of Firm at Tenkasi has been enclosed. This factum has not been seriously disputed by the petitioner. The petitioner in his solemn affidavit filed in support of the writ petition, though had stated that he has entered into a short term financial arrangement with Syed Ibrahim with the clear intention that the agreement could never be acted upon without the approval of the Indian Oil Corporation, however, impliedly admitted in his letter of 10.12.1999, made available at page 279 of the typed set of papers, styled as an interim rely to the show cause notice, to the effect that the petitioner had taken various measures to rectify the violations committed by him and had been agitating in various legal forums for the past 4 ½ years for the same. In the light of the above admission that the petitioner had committed violation of the agreement and on the face of the registered partnership agreement dated 06.06.1994, it is as plain as anything that the petitioner has committed a breach of contract which would render the petitioner liable for termination of the agreement.

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11. The petitioner, in the affidavit filed in support of the writ petition, has not stated anything about the show cause notice dated 07.07.1999 issued by the Divisional Office, Madurai, the seventh respondent by giving seven days' time to submit its objections, if any. That show cause notice was issued calling upon the petitioner as to why the dealership agreement should not be terminated for breach stated above. That was followed by another letter dated 29.07.1999 in which the seventh respondent has informed the petitioner that the respondents were initiating necessary action to terminate the dealership, by referring to the show cause notice dated 07.07.1999 and its receipt by the petitioner on 19.7.1999, as the petitioner has not replied to the show cause notice dated 07.07.1999 within the time granted in tune with the dealership agreement. Thus, it is evident that the petitioner has neither responded to the show cause notice dated 07.07.1999 nor remedied the breach. The further letter dated 29.07.1999 of the respondent informing about the proceeding initiated by them to terminate the dealership also met with the same treatment.

12. The sixth respondent issued a show cause notice dated 11.11.1999 for the same dereliction giving ten days' time to send his cause, if any, to the action stated to be initiated, that is, termination of the agreement and passed the order impugned dated 07.12.1999 as nothing has been forthcoming from the petitioner by that date. It is contended on behalf of the petitioner that the show cause notice dated 11.11.1999 superscribed as RPAD/Speed Post, was received by ordinary post in the first week of November 1999. The same show cause notice was sent by the seventh respondent by RPAD which was received by the petitioner on 04.12.1999. Except the assertion in the affidavit (para 27) and argument across the bar, no material is placed to prove the same in the original record.

13. The petitioner produced across the Bar a postal cover in order to sustain his case that the show cause notice dated 11.11.1999 of the sixth respondent has been sent through the seventh respondent, which was ultimately, received by him on 04.12.1999. From the various endorsements and notings made in the cover, it could be only seen that the cover was registered on 24.11.1999 and was not delivered till 29.11.1999. The date of delivery is not available. This Court is not able to accept that the cover could be the cover carrying the show cause notice from the seventh respondent, as the show cause notice was issued by the Deputy General Manager of the Indian Oil Corporation, Chennai, the sixth respondent and there is no reason why the same show cause notice should be sent by the seventh respondent, in the absence of any other material evidence either expressly or impliedly indicating that the copy of show cause notice dated 11.11.1999 sent to the petitioner

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through the seventh respondent. It is the case of the petitioner in paragraph 27 of the affidavit that the show cause notice dated 11.11.1999 issued by the sixth respondent was received by him only through ordinary post. In addition to that, the interim reply of the petitioner dated 10.12.1999 also is addressed only to the sixth respondent, the Deputy General Manager of the respondent Corporation, Chennai. There is no acceptable explanation as to what is the response of the petitioner to the show cause notice received from the sixth respondent. From the reasons stated above, I am not able to accept the story of the petitioner that the show cause notice dated 11.11.1999 of the sixth respondent has been sent by the seventh respondent by RPAD on 24.11.1999 and received by the petitioner on 04.12.1999. The letter of the petitioner dated 10.12.1999 make a mention that the show cause notice was received by the petitioner on 04.12.1999 in the subject column. The said letter is emanating from the petitioner. A self serving letter cannot be regarded as sufficient proof to accept the contention of the petitioner.

14. In the absence of any independent material to prove the date of receipt of the show cause notice, it has to be presumed that the show cause notice sent through the post would have ordinarily reached the petitioner within a day or two or utmost within a week. It is also crucial to note that the petitioner by letter styled as interim reply dated 10.12.1999 has accepted that he has committed violation of the agreement. The sequence of events narrated in the affidavit and the proceedings - civil and criminal, in paragraphs 5 to 26 of the affidavit were all initiated against the said Syed Ibraim. The writ proceedings initiated against the respondent were all ended against the petitioner. The admission by the petitioner in the affidavit while narrating the facts that the Syed Ibrahim has taken over possession of the business cannot be easily brushed aside, but goes to prove against the petitioner to the same effect. From the above, the one and only conclusion that could be arrived at is that the business has been transferred in the name of Syed Ibrahim and he was in possession of not only the business, but also the property in which the retail outlet was conducted for which dealership was granted to the petitioner, who committed breach of the agreement, which rendered the petitioner suffer an order of termination of the agreement of dealership. Of course, the petitioner is agitating the issue before various fora.

15. The petitioner's inaction to file a suitable reply to the show cause notice dated 07.07.1999 and 11.11.1999 is a grave error which also implies that the petitioner has no other reply or cause to offer. In the above circumstances, it cannot be regarded that the respondents have violated the principles of natural justice

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by passing the impugned order of termination. All due reasonable opportunities have been given to the petitioner. However, the petitioner has not made use of those opportunities. Hence, the order impugned cannot be stated to be passed in violation of the principles of natural justice and in violation of the terms of the agreement or in an arbitrary manner.

16. The other contention that the impugned order is a non speaking, cryptic and contrary to facts are not supported by any material. The show cause notice dated 11.11.1999 has stated about the violation, dereliction or contravention of the agreement in explicit manner and called upon the petitioner to show cuase. As the petitioner has not responded to the show cause notice, the order has been passed as proposed in the show cause notice.

17. The other submission of the petitioner is that the act of the respondents in not giving effect to the order of this Court in writ petition No.11363 of 1997 and Writ Appeal No.958 of 1997 by taking proceedings against the other officials would amount to mala fide. I am not able to countenance this submission on the simple ground that no such direction has been given either in the order in the writ petition or in the appellate order. The petitioner filed a writ petition seeking for the relief of issuance of writ of mandamus directing respondents 1 to 4 i.e., the Ministry of Petroleum and Natural Gas, New Delhi; The Executive Director, Indian Oil Corporation Limited, Chennai; The Chief Retail Marketing Manager, Indian Oil Corporation Limited, Chennai; and Senior Divisional Manager, Indian Oil Corporation Limited, to forbear from dealing with the seventh respondent therein, i.e., Syed Ibrahim as if he were the dealer of the Indian Oil Corporation retail outlet at Puliyarai and for a further direction for payment of damages both – liquidated and unliquidated. That writ petition has been dismissed by the learned single Judge by observing that the dispute apparently had been in existence of well over 2 ½ years and the correspondence produced showed that the petitioner had been giving complaint atleast for the last two years and there appeared to be some criminal cases involving the petitioner and the seventh respondent, i.e., Syed Ibrahim. The petitioner also appeared to have filed a civil suit. Having regard to all those facts, the learned single Judge non suited the petitioner for the relief sought for. That order declining to entertain the writ petition was confirmed by the Division Bench by holding that the Division Bench did not find any ground to interfere with the learned single Judge. Hence, those submissions have to be rejected.

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18. The attack on the impugned order on the ground of malafide is raised, in my view, for the sake of attack. Though several officers of the respondent Corporation are arrayed as parties in their name, except referring them here and there in the summation of facts, no specific act of malafide has been raised or pointed out against any one of the named respondent. As seen from the affidavit, the averment proceeds that after the said Syed Ibrahim has taken over the outlet, the petitioner made a representation to the 9th respondent not to supply petroleum to the outlet, but the respondent supplied. Thus the officials of the respondent Corporation colluded with the said Syed Ibrahim. This averment can never be the basis or foundation to attribute malice against the respondent. It is well established principle of law that malice in common acceptation means and implies spite or ill-will. There must be factual support for the allegation of mala fide. Mere user of the word 'mala fide' would not by itself make a petition entertainable. The Court must scan the factual aspects and come to its own conclusion. (See (2000) 5 SCC 630 - Prabodh Sagar v. Punjab State Electricity Board) If this proposition is applied to the facts of this case, wild allegations above referred to cannot be regarded as a definite imputation against any of the officers of the respondent Corporation. Hence, the contention of mala fides fails.

19. The further contention of the petitioner is that in paragraphs 10, 13 and 14 of the affidavit specific averments of mala fide action of the eighth respondent has been taken to the effect that the eighth respondent coerced the petitioner to induct the said Syed Ibrahim in his business and he even wrote a letter dated 22.02.1995 threatening him with dire consequences of termination of dealership. The letter is made available at paragraph 158 of the typed set of papers in vernacular. There is no such threat. In that letter it was pointed out that for the year 1997-98 the sale from the petitioner's outlet was considerably reduced from the previous year. So, for the months of February and March, 1998 the sale target has been refixed as 144 and 185 Kilo litres respectively and further directed the petitioner to provide necessary basic amenities as per guidelines issued by the Government. The said letter contains no threat, as contended by the petitioner. Further, yet another fact against the petitioner is that the petitioner has arrayed respondents 7 to 10 in writ petition No.10331 of 2000. It could be seen from the notice paper that as on July 2003 respondents 7 to 10 were not served through Court and the Registry has directed the petitioner to pay batta with petition for serving respondents 7 to 10. For that innocuously the petitioner's counsel has made an endorsement to the following effect :

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"Giving up respondents 7 to 10 in the light of their not being served."

The said endorsement is made in writ petition No.18805 of 2000, but there are no respondents 7 to 10 in that writ petition. The endorsement is made with reference to the direction issued by the Registry to the petitioner to pay batta and petition for serving respondents 7 to 10 in writ petition No.10331 of 2000. Thus, the endorsement by the petitioner is with reference to respondents 7 to 10 in writ petition No.10331 of 2000 only. Having given up those respondents in the lis, the petitioner cannot now turn around to say that the allegations levelled against them are not controverted by them specifically.

20. The last of the contentions of the petitioner is that the respondents failed to refer the matter for arbitration and it is against the accepted covenant of the agreement. Here again, I am not able to subscribe my view in favour of the petitioner on the ground that in the earlier writ petition, the petitioner was non suited on the ground that the petitioner had entered into a contract with the Corporation and the contract provided for the manner in which the dispute or differences were to be resolved and it is that method that should be adopted by the petitioner for resolving the dispute. Inspite of such an observation, the petitioner has not invoked the arbitration clause earlier and even after the passing of the impugned order, the petitioner failed to invoke that arbitration clause, however, now points out against the respondent to the effect that the respondent has not referred the matter in dispute for arbiration.

21. The latter writ petition is only an aftermath of the earlier one. In that writ petition, the pendency of the former writ petition questioning the correctness of the order of termination, and interim order granted thereon was taken as a ground for restraining the first respondent therein to recall the order of sanction issued in favour of the third respondent to have a retail petroleum outlet in survey No.214/2 of Pudur village. The interim order granted in favour of the petitioner in writ petition No.10331 of 2000 has been vacated as early as on 09.10.2002.

22. Now, the former writ petition having been dismissed, as a necessary corollary the latter writ petition has also to be dismissed. Further, the location of the petroleum outlet granted by the first respondent in favour of the third respondent in the latter writ petition is totally independent of the grant originally made in favour of the petitioner. Thus, assuming for a moment that the

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petitioner is running an outlet, even then, he could not question the sanction issued in favour of the third respondent for locating his retail outlet in the nearby area, of-course, the said sanction order shall conform the guidelines issued by the respondents with regard to the vehicle population and the distance between one outlet and the other outlet in the surface transport. As already stated, when the petitioner has been non suited for the relief of questions the termination order, the consequent writ petition quashing the sanction of the third respondent to have an outlet in survey No.214/2 of Pudur village is not maintainable at the hands of the petitioner and liable to be dismissed and it is accordingly dismissed.

23. In the result, both the writ petitions fail and are accordingly dismissed. No costs. The connected miscellaneous petitions are dismissed consequently.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary,
   The Ministry of Petroleum and Natural Gas,
   Shastri Bhavan, New Delhi 110 001.

2. The Joint Secretary (Marketing),
   The Ministry of Petroleum and Natural Gas,
   Shastri Bhavan, New Delhi 110 001.

3. The Chairman
   Indian Oil Coporation Limited,
   Scope Complex Core 2,
   7 Institutional Area,
   Lodhi Road, New Delhi 3.

4. The Director (Marketing),
   Indian Oil Bhavan,
   G-9, Ali Yavar Jung Marg,
   Bandra (East), Bombay 400 051.

5. The Chief Retail Marketing Manager,
   Bharat Petroleum Oil Corporation Limited,
   No. 1 Ranganathan Garden Street
   Anna Nagar, Chennai 40

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6. The Deputy General Manager 9 1/c (TN &P)
Indian Oil Corporation, Indian Oil Bhavan,
139, Nungambakkam High Road, Chennai.

7. The Senior Divisional Manager,
Indian Oil Corporation Limited,
Madurai Division Office,
No.2, Race Course Road,
Chokkikulam, Madurai 625 002.

8. The Assistant Manager (Sales),
Indian Oil Corporation,
Thatchanallur, Tirunelveli.

9. The Installation Manager,
Indian Oil Corporation,
Thatchanallur, Tirunelveli.

10. The Divisional Manager,
Indian Oil Corporation Limited,
No.2, Race Course Road,
Chokkikulam, Madurai 625 002.

+ 4 cc to Mr. R. Karuppan Advocate sr no. 18041, 37366
+ one cc to M/s. Meera Gupta, Advocate SR NO. 36896

vs(co)
nm(28.08.2006)

W.Ps.
Nos.10331 and 18805 of 2000

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